

*EXHIBIT I***Delaval, Jan**

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**From:** bjc@ucl.ac.uk  
**Sent:** Tuesday, March 23, 2004 8:19 AM  
**To:** Delaval, Jan  
**Subject:** Re: FW: publication date

Dear Ms Delaval

Ortel et al., British Journal of Cancer, Vol 77 (11), 1998, pages 1744-1751

I have now had the opportunity to read the stored filing for the BJC for the period in question. I am sorry that it has taken a little time to do this. The files are not stored in the buildings where I normally work

You will appreciate that the files have been weeded. However, I found several documents that bear on the issue. In particular, there were some papers from meetings of the Editorial team in June and October of 1998. In the papers for both those meetings the publisher reported that the journal had been publishing to schedule.

In the report to the meeting on June 2nd it is stated that Volume 78 Issue 1 had been passed for press with Volume 78 Issue 2 due to be passed for press the following day (June 3rd). These papers refer to the publication of both Volume 77 Issue 11 and Volume 77 Issue 12 in the past tense, although the schedules would suggest that Issue 12 was published a day or so after the meeting: advance copies were probably available at the meeting. As you may be aware, both 77 Issue 11 and 77 Issue 12 were specially large (double issues), as at that time the BJC had a backlog of papers awaiting publication. It is therefore my belief that if either of them had been published late or had caused a delay in the schedule of other issues, this would have been clearly stated, since there was more than the usual amount of attention paid to them. During the eight or so years that I have been associated with the BJC, I have not known it publish issues out of sequence.

In the papers for the October meeting there is a detailed report of the time spent at each stage of the production cycle for each paper in Volume 77 Issue 11. This report gives that issues publication date as 22 May. Another report lists the advance copy date (of this 352pp issue) as 20 May 98.

Obviously, at this distance I cannot be certain, but I think it very likely that a significant number of copies would have been in the hands of UK and European subscribers by or before 22/23 May 1998 and that those closely associated with the journal would have had copies a couple of days earlier.

Over the years, working practises both in publishing houses and at the British Library have changed and I would not in any way wish to comment adversely on

the information that you have, or on current practice. However, you may wish to consider that publishers do not always send out unpaid/complimentary copies first or even at the same time as the subscribers copies and that, historically, the British Library has not always been able to make specialist journals and books publicly available on their publication date.

I hope that this resolves your questions to the British Journal of Cancer. Please let me know.

Yours sincerely  
Julia Maidment  
BJC Business Manager

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At 12:18 Thursday 04/03/2004, you wrote:

Dear Ms Maidment,

My patron, Dr. Rawlings, has requested further verification from you. Please refer to his remarks in response to your own in paragraph 2. The distinction is critical to us, in that the issuance of a US patent depends in part in the establishment of priority over the prior art.

Can you confirm that subscribers (apparently those in the United Kingdom) received this particular volume prior to 23-24 May 1998?

I do thank you for your patience and kind assistance.

Cordially,

Jan Delaval  
Reference Librarian  
Biotechnology & Chemical Library  
United States Patent and Trademark Office

-----Original Message-----

From: Rawlings, Stephen  
Sent: Tuesday, March 02, 2004 11:05 AM  
To: Delaval, Jan  
Subject: RE: publication date

Hi Jan:

I have had a reply from the applicant and they have provided evidence that the volume in question was not received by the British Library until June 2, 1998, and because it was being cataloged it did not become publicly available until after June 4, 1998.

I am wondering if you might be able to either procure additional evidence from your contact at the publisher or perhaps some other evidence that the journal was received by others as early as May 22 or 23, 1998, as the letter from the publisher suggests.

Thanks!

-----Original Message-----

From: Delaval, Jan  
Sent: Monday, November 24, 2003 9:40 AM  
To: Rawlings, Stephen  
Subject: FW: publication date

Stephen -

Will the publisher's response below meet your needs, or do you want further investigation as per the last paragraph?

Jan

-----Original Message-----

From: [bjc@ucl.ac.uk](mailto:bjc@ucl.ac.uk) [<mailto:bjc@ucl.ac.uk>]  
Sent: Monday, November 24, 2003 9:19 AM  
To: Delaval, Jan  
Subject: RE: publication date

Dear Ms Delaval

Thank you for your enquiry.

You will appreciate that the paper to which you refer, Ortel et al., British Journal of Cancer, Vol 77 (11), 1998, pages 1744-1751 was published more than five years ago and we do not keep detailed production information in our active files for that length of time.

The cover date for Volume 77 Issue 11 of the British Journal of Cancer was

June 1998. It was the first of two June issues (BJC publishes 24 issues per year, approximately fortnightly). Our records indicate that the production schedule was for printed copies to be available on 20 May 1998 in which case the mailing date would have been approximately 22-24 May. UK subscribers could have received their copies as early as 22-23 May, whereas copies sent to the USA would have arrived during the following week. It was the BJC's practice to have copies in the hands of subscribers ahead of the cover date at that time.

I have no reason to believe that that issue was off schedule, but have not yet had the opportunity to search the remaining archived files for the period. Is there any reason for me to do so?

Yours sincerely  
Julia Maidment  
BJC Business Manager

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At 16:52 Friday 21/11/2003, you wrote:

>Dear Mr. Welsh -  
>  
>Thank you for your response. Could you kindly inform me of the status of  
>my inquiry? You will note that the original request was made on 5  
>November 2003, and that I have sent additional requests for assistance.  
>  
>If the information is simply unavailable, then please advise me as such.  
>  
>Thank you again.  
>  
>Cordially,  
>  
>                    Jan Delaval  
>                    United States Patent and Trademark Office  
>  
>-----Original Message-----  
>From: [bjc@ucl.ac.uk](mailto:bjc@ucl.ac.uk) [<mailto:bjc@ucl.ac.uk>]  
>Sent: Thursday, November 13, 2003 11:25 AM  
>To: Delaval, Jan  
>Subject: Re: publication date  
>

>Dear Ms Delaval

>

>Thank you for your e-mail. I have been away from the office recently and  
>apologise for the delay in replying.

>

>The information you have requested is not readily available as it is  
>archived. It may take us some time to see what we have. We will let you  
>know once we have further information.

>

>yours sincerely

>

>Andrew Welsh

>Editorial Office Manager

>British Journal of Cancer

>

>At 20:27 Wednesday 05/11/2003, you wrote:

>

>>Dear Colleagues:

>>

>>To establish priority regarding a pending patent application, we need to  
>>determine the exact publication date (i.e., earliest date or receipt of the  
>>issue in question by the public) of the following:

>>

>>TI: Differentiation-specific increase in ALA-induced protoporphyrin IX  
>>accumulation in primary mouse  
>>keratinocytes.

>>

>>AU: Ortel, B, Chen, N, Brissette, J, Dotto, GP, Maytin, E, and Hasan, T

>>

>>SO: British Journal of Cancer, vol 77 (11), 1998, pages 1744-1751.

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>>[http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?cmd=Retrieve&db=PubMed&list\\_uids=9667642&dopt=Abstract](http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?cmd=Retrieve&db=PubMed&list_uids=9667642&dopt=Abstract) (NLM record)

>>

>>The National Library of Medicine record indicates that June is the  
>>publication month. However, for our purposes, we need more specific  
>>information, including day, month and year. A mailing date to subscribers  
>>would also be of interest to us.

>>

>>Could you kindly forward the information directly to me as soon as possible?

>>

>>Thank you so very much for your help.

>>>

>> Jan Delaval  
>> Reference Librarian